

REBUTTAL TO FALLER'S ARTICLE: "THE PARENTAL ALIENATION SYNDROME: WHAT IS IT AND WHAT DATA SUPPORTS IT?"

(This Rebuttal is an excerpt from a forthcoming article entitled *The Parental Alienation Syndrome in American law*, written by Demosthenes Lorandos, Ph.D., J.D.¹)

Adherence to a valid and reliable methodology separates "junk" from "science".² With the changes in the expert evidence rules, judges are now required to be "Gate Keepers".³ In this gate keeping role, courts must now qualify only proposed experts who are grounded in the principles and methodology of science.⁴ These gatekeepers must also determine the validity, reliability and trustworthiness of proposed evidence.⁵ Faller's material fails at every turn, for when one actually examines her work, one discovers it to be methodologically naïve at best and thinly veiled misrepresentation at worst. For not only is Faller's

¹ B.A. Psychology - San Francisco State University 1969; M.A. Psychology – New School for Social Research 1972; Ph.D. Clinical Psychology – Union Graduate School 1978; J.D. *Cum Laude* University of Detroit 1991.

Dr. Lorandos is a member of the State Bar of California and Michigan. He is licensed as a clinical psychologist in California and Michigan. He is the president of *Psychlaw.net, l.l.c.* 214 North Fourth Avenue, Ann Arbor, Michigan 48104 - www.psychlaw.net.

² Peter W. Huber. (1993). *Galileo's Revenge. Junk Science in the Courtroom*, New York: Basic Books. *And see: See Sharon Begley, The Meaning of Junk Science, NEWSWEEK*, Mar. 22, 1993, at 64. - Faigman, D. L. (1989). *To Have and Have Not: Assessing the Value of Social Science to the Law as Science and Policy*, 38 Emory L.J. 1005. - Lorandos, D. (1995). *Finding the Right Expert*, In: *Expert Witnesses: Beyond Junk Science and Daubert*. Institute of Continuing Legal Education, Ann Arbor, Michigan. - Campbell T.W. and Lorandos, D. (2001) *Cross Examining Experts in the Behavioral Sciences*. Minneapolis, Mn. West Group – Two volumes.

³ *Daubert v Merrell Dow Pharmaceuticals Inc.*, 509 U S 579, 113 S Ct 2786, 125 L Ed 2d 469, (1993): *Trial Court* must be the gatekeeper who must make a preliminary assessment as to whether the reasoning and methodology proffered are scientifically valid. 509 U S 579, 113 S Ct at 2796, 125 L Ed 2d at 482.

⁴ According to the *Daubert* Court, the Trial Court must ensure that proffered testimony is relevant and reliable with a focus solely on principles and methodology. 509 U S 579, 113 S Ct at 2797. - Evidentiary Admissibility shall be based upon reliability determined by the degree of scientific validity. 509 U S 579, 113 S Ct at 2795. – Experts must be grounded in the methods and procedures of science. 509 U S 579, 113 S Ct at 2795.

⁵ The *Daubert* Court explicitly instructed that "... *This entails a preliminary assessment* of whether the reasoning or methodology underlying the testimony is *scientifically valid* and of whether that reasoning or methodology properly can be applied to the facts in issue." *Id.* 509 U S 579, 113 S Ct at 2796. - Grounding its admissibility analysis in the principles and methodology of science, the Court noted: "...that scientists typically distinguish between 'validity' (does the principle support what it purports to show?) and 'reliability' (does application of the principle produce consistent results?)....our reference here is to *evidentiary* reliability--that is, trustworthiness....In a case involving scientific evidence, *evidentiary reliability* will be based upon *scientific validity*." *Daubert* 509 U S 579, 113 S Ct at 2795 n. 9, emphasis in original.

work methodologically compromised, the gap between what she *says* she and her colleagues do, and what they *actually do*, is shocking.

Dr. Faller began her Spring, 2000 essay by citing herself.⁶ Citing oneself is not necessarily bad, except the material Faller cites to, is an example of her lack of methodological awareness and frank desire to mislead readers. She cited her 1995 article, written with student social worker Ellen DeVoe entitled: *Allegations of Sexual Abuse in Divorce*⁷ The primary purpose for citing this work was to refute Gardner's proposition that in the highly charged atmosphere of child custody litigation, most allegations of child sexual abuse, appear to be fabricated.⁸

A close look at Faller and DeVoe's 1995 study reveals that they set out to validate their idea that sexual abuse allegations in divorce litigation are, more often than not – true. Their conclusion, is that their own analytical acumen, found them able to achieve "a higher substantiation rate (72.6%) than other studies."⁹ A look at Faller's research subjects and reporting, reveals serious methodological problems.

In the mid-1990's, Kathleen Faller and her "Faller Group"¹⁰ developed a reputation for wildly skewed and improper methodology replete with repeated leading questions, forced focus on anatomical doll

⁶ Dr. Faller obtained a Ph.D. in social work and social psychology. The program in which she teaches, offers a Ph.D. in this curious blend of social work and social psychology but does not qualify the graduate for licensure as a psychologist. Her citation, at note 8, was to: Faller, K.C. and DeVoe, E. (1995). *Allegations of Sexual Abuse in Divorce*, 4 *J. Child Sexual Abuse* 1.

⁷ *Id.*

⁸ As discussed above, as most allegations of child sexual abuse cannot be substantiated, considerations of *base rate* alone find Gardner's position to be clearly correct. When one considers the highly charged atmosphere found among parents *post* filing of petitions for exclusive parenting, it is merely silly to suggest that somehow allegations during this difficult time are more accurate. *Base rate* in the behavioral sciences refers to essentially the *prevalence* of a phenomena in a population. For more information on this concept and its impact upon the reliability and validity of assessments in the behavioral sciences, please see: Robyn Dawes (1988). *Rational Choice in an Uncertain World*. New York: Harcourt Brace; Robyn Dawes (1992). The importance of alternative hypothesis and hypothetical counterfactuals in general social science. *General Psychologist* 2; Lorandos, D. & Campbell, T. (1995). Myths & Realities of Sexual Abuse Evaluation, and Diagnosis: A Call for Judicial Guidelines, 4 *Issues in Child Abuse Accusations* 1; Lorandos, D. (1995). Finding the Right Expert, In: *Expert Witnesses: Beyond Junk Science and Daubert*. Institute of Continuing Legal Education, Ann Arbor, Michigan. - Campbell T.W. and Lorandos, D. (2001) *Cross Examining Experts in the Behavioral Sciences*. Minneapolis, Mn. West Group Two volumes.

⁹ Faller, K.C. and DeVoe, E. (1995). *Allegations of Sexual Abuse in Divorce*. 4 *Journal of Child Sexual Abuse*. 1 , pg 21.

¹⁰ Also know as the *Family Assessment Clinic*, in the Social Work School at the University of Michigan – Ann Arbor. Also see: *Champney v Champney* Jackson County, Michigan Case No. 92-062071-DM; *Champney v Faller et al.* Washtenaw County (Ann Arbor) Michigan Case No. 95-4760CK; *Recchia v Recchia* Macomb County Michigan Case No. 89-5210-DM; *Recchia v Faller et. al* Washtenaw County (Ann Arbor) Michigan Case No. 97-4181-NO *Consolidated with:* 97-16740-NO; and *Bielaska v Orley* Wayne County (Detroit) Michigan Case No. 88-824681-DC & Michigan Court of Appeals Docket Nos.

genitals and coercive processes.¹¹ With their skewed methodology, their substantiation rate soared. This is a fact of immense importance because, Faller and DeVoe began their article by explaining that their sample consisted of "215 allegations of sexual abuse in situations of divorce, involving 174 children."¹² When one investigates, one finds that the population from which Faller and DeVoe drew their "215 allegations" was the very clinic in which their validation tactics of leading and coercive processes, was created. But then, they omit to report that they further selected only the cases from that skewed sample that they wanted. When questioned about the case selectivity in this study, Ms. DeVoe testified as follows:

Q Now, how did you select the 215 cases?

A I believe they were cases that involved a divorce.

Q So did you look at every case in the 15 years: "we have systemically gathered data for research purposes," and separate out only the divorce ones?

A I don't know that we looked at every case for the last 15 years.

....

Q Is there a problem of selectivity if you didn't look at every case to see if it involved divorce?

A There could be.

Q Could that be a confounding variable?

A Sure.

....

Q Wouldn't you agree that if you have a database in 15 years of, let's say, a thousand cases and you only picked 215, that there may be other cases in there that involved allegations in a divorce situation that were not selected?

A I mean, there could have been, but I'm saying I'm not – I can't speak to that.

Q Would there be methodological problems --

A Sure.

Q -- if you didn't -- if you just selected a particular 215 cases and there may have been others that involved allegations in divorce that you didn't select?

A That would be a methodological problem.

Q Would that have a tendency to invalidate your data?

A It could.

173666; 174949; 175287; 175388. All of which are Faller Group – improperly validated sex abuse allegations in divorce – cases.

¹¹ See discussion of *Bielaska v Orley* Michigan Court of Appeals Docket Nos. 173666; 174949; 175287; 175388. A Faller Group – improperly validated sex abuse allegation in divorce – case. *Infra*.

¹² Faller, Kathleen and DeVoe, Ellen.(1995). Allegations of Sexual Abuse in Divorce. *Journal of Child Sexual Abuse*. Vol. 4(4) , pg 5.

Q Certainly your data would be skewed, would it not?

A It could be.

....

Q You just think somebody gave you the ones that involved divorce, but you don't know if you got all of them; is that --

A I'm not positive that we got all of them.

Q Do you have *any information* that you got all of them?

A I've answered the question."¹³

These are not the only methodological problems in Faller and DeVoe's "research". They go on to inform the reader: "Data for this study were coded from case records..." and in weighing a variety of factors from their chosen cases, "... ultimately determinations [were found to] derive from clinical judgment."¹⁴ Again, this may sound benign to the typical judge, attorney or law student, but research in the behavioral sciences teaches that "clinical judgment" is far less than trustworthy in forensic applications.¹⁵ This is another critical consideration when confronted with work from folks like Kathleen Faller.

¹³ Deposition of Ellen DeVoe – September 13th, 1996 page 70 – 73, in the matter of *Champney v Faller et al.* Washtenaw County (Ann Arbor) Michigan Case No. 95-4760CK. See: *Detroit Free Press* November 3rd & 4th, 1997 "Expert and her methods on trial" - <http://www.freep.com/news/childrenfirst/qfaller3.htm> These are excerpts only which have been edited to take out "ahs" and "ums" and numerous objections by Ms. DeVoe's attorney. A copy is in the possession of the author.

¹⁴ Faller, Kathleen and DeVoe, Ellen. (1995). Allegations of Sexual Abuse in Divorce. *Journal of Child Sexual Abuse*. Vol. 4(4) , pg. 8.

¹⁵ See, e.g.: Campbell, T.W. and Lorandos, D. (2001) *Cross Examining Experts in the Behavioral Sciences*. Minneapolis, Mn. West Group two volumes. Specifically Chapter Three: *Challenging Clinical Judgment*. And see: Rice, S.A. (1929). Interviewer bias as a contagion. *American Journal of Sociology*, 35, 421-423; Temerlin, M.K. (1968). Suggestion effects in psychiatric diagnosis. *Journal of Nervous and Mental Disease*, 147, 349-353; Rothbart, M., Evans, M. & Fulero, S. (1979). Recall for confirming events: Memory processes and the maintenance of social stereotypes. *Journal of Personality and Social Psychology*, 15, 343-355; Sattin, D.B. (1980). Possible sources of error in the evaluation of psychopathology. *Journal of Clinical Psychology*, 36, 99-105; Bonnie, R & Slobogin, C. (1980). The role of Mental Health Professionals in the Criminal Process: The Case for Informed Speculation. 66 *Virginia Law Review* 427, p 457; Faust, D. & Ziskin, J. (1988). The expert witness in psychology and psychiatry. *Science*, 241, 31-35.; Sales, Shuman & O'Connor (1994) Admissibility into evidence of child sexual abuse memories, 2 *Shepard's Expert and Sci. Evid. Q.* 389.; Dawes, R.M. (1994). *House of cards: Psychotherapy built on myth*. New York: Free Press. Also, in *O'Conner v. Commonwealth Edison Co.*, 807 F. Supp. 1376 (C.D. 111. 1992), aff'd, 13 F.3d 1090 (7th Cir. 1994), federal district court judge Michael Milim dealt with proffered testimony from an ophthalmologist, who proposed to testify that by merely examining the plaintiff, he discovered that the plaintiff's cataracts were a result of his exposure to radiation at the defendant's nuclear power plant. The basis the expert's opinion was that the type of radiation to which the plaintiff was exposed could cause cataracts, and that he had observed five patients in the past who had the same type of cataracts as the plaintiff, all of which had been radiation-induced. Judge Milim noted that the expert had committed the logical fallacy known as the "Converse Accident" (hasty generalization). Judge Mihm wrote that this occurs, when a person erroneously creates a general rule from observing too few cases. The judge noted that the expert had ignored the scientific literature that showed that the plaintiff's

Researchers who rely on their own clinical judgment, typically ask questions that can only confirm their *a priori* hypotheses. Fundamental considerations of scientific logic, however, dictate that scientists engage in a process known as "proof by disproof."¹⁶ In other words, a scientific hypothesis is tentatively accepted if, and only if, it cannot be disproven. Scientific experiments, are therefore designed to disprove hypotheses. Similarly, physicians typically reach their diagnostic conclusions attempting to rule out alternative explanations for a condition. But researchers like Faller, often question subjects in a manner that biases the information they obtain.¹⁷ No where is this more devastating, or prevalent, than in the area of child sexual abuse investigations.¹⁸ Sadly,

cataracts could have come from other sources. Judge Mihm therefore excluded the testimony. For other examples of courts excluding causation testimony when the expert did not discount other possible causes, see *Smith v. Ortho Pharmaceutical Corp.*, 770 F. Supp. 1561, 1581 (N.D. Ga. 1991); *DeLuca v. Merrell Dow Pharmaceuticals*, 791 F. Supp. 1042, 1058-59, aff'd, 6 F.3d 778 (3d Cir. 1993), *cert. denied*, 114 S. Ct. 691 (1994); Paoli, 706 F. Supp. at 376; *In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1223, 1251, 1253 (E.D.N.Y. 1985), aff'd, 818 F.2d 187 (2d Cir. 1987), *cert. denied sub nom. Lombardi v. Dow Chem. Co.*, 487 U.S. 1234 (1988).

¹⁶ Schuck, P.H. (1993). Multi-Culturalism Redux: Science, Law and Politics, 11 *Yale Law & Policy Review* 1, 16 ("Scientists subscribe to and are actuated by rigorous standards of empirical investigation and proof; to deviate from these standards is to be deemed professionally incompetent, or worse.")

¹⁷ See, e.g.: Snyder, M. & Thomsen, C.J. (1988). Interactions between therapists and clients: Hypotheses testing and behavioral confirmation. In D.C. Turk & P. Salovey (Eds.) *Reasoning, influence, and judgment in clinical psychology*. New York: Free Press.

¹⁸ See, e.g.: Poole, D. & White, L. (1991). Effects of questions repetition on the eyewitness testimony of children and adults. *Developmental Psychology*, 27, 975 – 986; Goodman, G. S., & Clarke-Stewart, A. (1991). Suggestibility in children's testimony: Implications for child sexual abuse investigations. In J. L. Doris (Eds.), *The suggestibility of children's recollections* (pp. 92-105). Washington DC: American Psychological Association; Wakefield, H., & Underwager, R. (1991). Sexual allegations in divorce and custody disputes, *Behavioral Sciences and the Law*, 9, 451-468; Dawes, R. (1992). The importance of alternative hypothesis and hypothetical counterfactuals in general social science. *General Psychologist*. pp 2 – 7; Ceci, S. J., Loftus, E. F., Leichtman, M., & Bruck, M. (1994). The role of source misattributions in the creation of false beliefs among preschoolers. *International Journal of Clinical and Experimental Hypnosis*, 62, 304-320; Lepore, S. J., & SESCO, B. (1994). Distorting children's reports and interpretations of events through suggestion. *Applied Psychology*, 79, 108-120; Lorandos, D. & Campbell, T. (1995). Myths and Realities of Sexual Abuse Evaluation and Diagnosis: A Call for Judicial Guidelines 7 *Issues in Child Abuse Accusations* 1; Poole, D & Lindsay, D. (1995). Interviewing preschoolers: Effect of non-suggestive techniques, parental coaching, and leading questions on reports of nonexperienced events. *Journal of Experimental Child Psychology*, 60, 129 – 154; Ceci, S. J., Leichtman, M., & White, T. (2001). Interviewing preschoolers: Remembrance of things planted. In D. P. Peters (Ed.), *The child witness in context: Cognitive, social, and legal perspectives*. The Netherlands: Kluwer. And see: Ceci, S. & Bruck, M. (1995) *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*. Washington, D.C. American Psychological Press; Ceci, S. & Hembrooke, H. (Eds.) (1998) *Expert Witnesses in Child Abuse*

this is the very area where Faller does her mischief.

In her Spring, 2000 *Child Maltreatment and Endangerment* effort, Dr. Faller opines that a reason that trial courts view allegations of child maltreatment in divorce with skepticism, is that "...domestic relations court judges and their staff have historically experienced fabrication on the part of divorcing couples." *and* the domestic relations court's "...role is to divide families and settle property...."¹⁹ She then mis-states Gardner's definition of *Parental Alienation Syndrome*²⁰ and cites herself for the proposition that there is "no empirical evidence to support" mental health experts who utilize Gardner's formulation.²¹ Curiously, in the article immediately following Faller's effort, psychologists Barry Bricklin and Gail Elliot provide citation to a great deal of empirical evidence and research studies in support of Gardner's core hypothesis.²²

Dr. Faller goes on to set out her recommendations for forensic interviewing of children and families, saying: "...professionals need to adhere to clear definitions and not overreach."²³ She recommends that "Evaluators should adopt a questioning style that gathers information from the child rather than presenting information to the child to be

Cases Washington, D.C. American Psychological Press; Campbell, T. W., (1998). *Smoke and Mirrors: The Devastating Effect of False Sexual Abuse Claims*. New York. Plenum Press; Poole, D. & Lamb, M. (1999). *Investigative Interviews of Children: A Guide for Helping Professionals*. Washington, D.C. American Psychological Press.

¹⁹ Faller, K.C. (2000). Child Maltreatment and Endangerment in the Context of Divorce 22 *University of Arkansas Little Rock Law Review* 429, 430-431.

²⁰ *Id.* at p 431.

²¹ *Id.*

²² Bricklin, B & Elliot, G. (2000). Qualifications of and techniques to be used by judges, attorneys, and mental health professionals who deal with children in high conflict divorce cases. 22 *University of Arkansas Little Rock Law Review* 501. Drs. Bricklin and Elliot cite to many research papers providing ample empirical support for the concepts inculcated by Gardner. In fact, they opine: " Since manipulation and/or parental alienation patterns are so frequently encountered in high conflict cases, it is imperative that professionals be aware of some of the diagnostic tools and procedures without which these patterns may escape detection.....We are especially concerned about recent articles and "shop-talk" among professionals which are dismissive of Gardner's contributions. *Try as we might, we cannot understand this negative commentary.*" page 517 *emphasis added*.

²³ Faller, K.C. (2000). Child Maltreatment and Endangerment in the Context of Divorce 22 *University of Arkansas Little Rock Law Review* 429, 432.

confirmed...."²⁴ She counsels that a team approach is best because: "... a team decreases the danger of individual bias and enhances the pursuit of a range of explanations...."²⁵ And next, she offers: "I recommend a standard battery of tests, including some measure of intelligence, the MMPI-2, the Rorschach using Exner scoring, the TAT, Draw a Person, and the Early Memories Test."²⁶ The remainder of her offering consists of Dr. Faller's suggested questions and recommendations about interviewing. Unfortunately for busy family court judges and attorneys, there is a dramatic difference between what Dr. Faller *says* she does and what she and her Faller Group *actually do*.

Rarely do courts have the benefit of an objective analysis of the work of a proposed expert. But three objective analyses of what Kathleen Faller and her *Faller Group* actually do (as opposed to what she says they do), have been accomplished in Michigan. In *Bielaska v Orley*,²⁷ a specialty panel of the Michigan Court of Appeals was assembled to review Faller and her Group's work in a case involving allegations of child sexual abuse and *Parental Alienation Syndrome*. The panel was composed of the former Chief Justice of the Michigan Supreme Court; a member of the Court of Appeals nominated by the White House for a Federal Judgeship and a well respected member of

²⁴ *Id.* at pg 438.

²⁵ *Id.* at pg 435.

²⁶ *Id.* at pg 443. While this may sound good, it is frankly unethical. As Dr. Faller is a social worker, and not licensable as a psychologist, her use of and recommendations about psychological testing is clearly beyond her competency. *See, e.g.* Code of Ethics – National Association of Social Workers: 1.04 Competence - (a) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience. <http://www.socialworkers.org/pubs/code/code.asp> Furthermore, none of these measures were designed in any fashion to assess child abuse in any way.

²⁷ Michigan Court of Appeals Docket Nos. 173666; 174949; 175287 and 175388 Slip Opinion July 19th, 1996 Former Chief Justice Thomas G. Kavanagh; Court of Appeals Judge Helene White and Oakland County, Michigan trial court judge Stephen N. Andrews. *available on-line from the Michigan Court of Appeals.*

[http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/19960719_C173666\(0065\)_173666.OPN.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/19960719_C173666(0065)_173666.OPN.PDF)

Hereinafter referred to as *Bielaska*.

the Michigan trial court bench.

The Court began a forty-nine page opinion by explaining that they had undertaken a "painstaking review of the entire record."²⁸ It is important to note that this objective panel also watched six hours of Faller and her Group on video tape: "...we have watched the interviews in their entirety..."²⁹ What did the panel find?

First: the Court noted numerous "inaccuracies" and deficiencies in the Faller Group's work:

"The report of the interview social worker **Ellen DeVoe** conducted with defendant wrongly stated that the parties had been married, that defendant had remarried during "the three years that she was gone' and that the older child was in first grade...

Dr. Faller testified that she was never told...

Dr. Faller testified she is a social worker and therefore not qualified...

Dr. Faller testified defendant did not tell her...

Dr. Faller testified... They did not review any other psychological evaluations, court records, or request information from the plaintiff...

Dr. Faller conceded the only information she had available was from defendant..."³⁰

Second: the Court noted with approval the deposition of:

"the then president of the American Psychiatric Association, E. Benedek, which severely criticized Faller's techniques in assessing child sexual abuse."³¹

"Dr. Benedek testified, after having reviewed a videotaped interview done by Dr. Faller of a child, that she did not believe the interview met the standards for unbiased interview regarding the question whether sexual abuse occurred. Dr. Benedek opined Dr. Faller's interview was **replete with leading questions**, and that **Dr. Faller engaged in repeated questioning while giving the child rare opportunity to tell her story...**"³²

Third: The Court adopted the findings of Drs. Patricia Wallace and Terence Campbell³³

²⁸ *Bielaska* - pg 31

²⁹ *Id.* - pg 37.

³⁰ *Id.* - pg. 22 *emphasis added*

³¹ *Id.* - pg 44, note 16

³² *Id.* - pg 22 *emphasis added*

³³ Patricia Wallace, Ph.D. was the trial court's hand picked independent evaluator. She is a licensed clinical psychologist, a certified forensic psychologist and the former chief psychologist of the Detroit Recorder's Court forensic services. Terence Campbell, Ph.D. is a licensed clinical psychologist, former chief psychologist of the Macomb County Circuit Court's *Psycho-Diagnostic Clinic*, the author of numerous studies in this field and literally, the author of the standard of care in these matters: *Fletcher v Fletcher*, 447 Mich 871, 901 note 4; 526 NW2d 998 (1994).

"We have viewed the taped interviews in their entirety and agree with Campbell's and Wallace's assessment of them." ³⁴

What did Dr. Wallace conclude? After reviewing all of "the Faller Group's" notes, records and video tapes, Dr. Wallace opined:

"the younger child was being **coached, rehearsed and prepared** to tell what the interviewer and defendant...want her to say..."³⁵

"the adults clapped for the younger child when she said what they wanted her to say..."³⁶ "[the children] were set up verbally several times about [what] they were going to have to testify to, or what they were going to have to talk to me about..."³⁷

"If they wanted a positive response, if they wanted the child to say, 'yes', you are right. They would end up with a ...[high voice]." ³⁸

"In my estimation the interviewers both had information or ideas that a sex abuse had occurred. And that it was the dad Ed that had committed it; and that the child should be frightened of or uncomfortable with Ed. The interviewer **undressed the male doll and fumbled with the penis while [the older child] was asked leading 'penis-related questions'** which provided visual as well as auditor[y] 'markers'".³⁹

"The danger in the type of questioning is that it presumes the existence of a fact and the child is unable to separate what is real or true from what is expected at the time. The child responds to what she thinks she is supposed to say **with regard to the created memory**." ⁴⁰

"The interviewer ... brought up the term finger. Finger had not been used anywhere in the dialogue. The interviewer brought up, 'Was his finger inside or outside?'...the interviewer showed the child both visually and auditorially what she should say." ⁴¹

What did Dr. Campbell conclude? After reviewing all of "the Faller Group's" notes, records and video tapes, Dr. Campbell opined:

"The interviewers asked **slanted one-sided questions** that were designed to obtain only information that was consistent with the hypothesis the children had been sexually abused."⁴²

"the interviewers simply went in and began asking questions...they did not ask questions that could obtain information that disconfirmed their expectations... under those circumstances, 'the probability of a **biased interview** soars.'" ⁴³

"[The children interpreted the] 'interviewers' series of repeated questions as meaning they did not get it right before and they better change their answers to what this big person expects." ⁴⁴

³⁴ *Id.* - pg 32

³⁵ *Id.* - pg 22 *emphasis added*

³⁶ *Id.* - pg 22

³⁷ *Id.* - pg 23

³⁸ *Id.* - pg 23

³⁹ *Id.* - pg 24 *emphasis added*

⁴⁰ *Id.* - pg 24 *emphasis added*

⁴¹ *Id.* - pg 25

⁴² *Id.* - pg 25 *emphasis added*

⁴³ *Id.* - pg 25 *emphasis added*

"the interviewers' questions create imagery in the child's mind, and can result in the problem that **the questions create the child's imagination**. Over time, what the child imagines and what the child remembers may become confused... the method of interviewing he saw on the four videotapes was 'very, very conducive to that outcome.'"⁴⁵

Repeated leading questions; one-sided questions; coaching; rehearsing; creating an imagination while fumbling with a doll's penis and asking "penis-related questions"; telling the child what to think while creating a memory.....were the findings of these two experienced forensic psychologists. The special panel of the Court went on to state: "We have viewed the taped interviews in their entirety and agree with Campbell's and Wallace's assessment of them."⁴⁶

Finally: the Court independently concluded the work of "the Faller Group" was "suggestive", "coercive" and "untrustworthy":

"Consideration of the principles set forth in *Meeboer (After Remand)* and the evidence presented at trial leads us to conclude that the statements made by the children during the tapes and reported by the therapists were **not trustworthy**." ⁴⁷

"The statements made by the children during the videotaped interviews followed **leading and repeated questioning**. There was expert testimony by Drs. Campbell and Wallace that the Faller Group's questioning was coercive and suggestive. **Our independent review of the tapes leads us to the same conclusion.**" ⁴⁸

"Drs. Wallace and Campbell testified defendant encouraged certain answers and that her presence would affect the interview. **Again, our independent review is in accord.**"⁴⁹ "When the tapes are viewed in their entirety, it is clear that the interviewer assumed the veracity of defendant and assumed that the abuse had occurred... **The children were subjected to repeated questioning until the desired response was obtained.**"⁵⁰

"[the] defendant (and one...Faller [Group] evaluator) **coached the children about 'what to tell the judge.'**" ⁵¹

".Faller Group interviews and evaluations were **unreliable** in that they proceeded from the presumption that plaintiff had sexually abused the children and relied to a great extent on unsubstantiated representations made by defendant." ⁵²

⁴⁴ *Id.* - pg 26

⁴⁵ *Id.* - pg 26 *emphasis added*

⁴⁶ *Id.* - pg 32

⁴⁷ *Id.* - pg 34 *emphasis added*

⁴⁸ *Id.* - pg 34 *emphasis added*

⁴⁹ *Id.* - pg 34 *emphasis added*

⁵⁰ *Id.* - pg 34 *emphasis added*

⁵¹ *Id.* - pg 36 *emphasis added*

⁵² *Id.* - pg 36 *emphasis added*

With this orientation to child interviewing, it is not surprising that Faller and DeVoe describe: "One hundred forty-nine cases (69.3%) were coded positive for evidence *from the child interview*."⁵³ Because, in the Faller Group "decisions about the veracity of an accusation of sexual abuse rested on clinical judgment."⁵⁴ Therefore, it is not surprising that in the Faller context, "the absence of supporting evidence does not necessarily signal a false account."⁵⁵

It should be noted that *Bielaska v Orley* is by no means an isolated example of Kathleen Faller and the Faller Group methodology. After watching video tape of the Faller Group in another divorce and *Parental Alienation Syndrome* case, Jackson, Michigan trial court judge Chad Schmucker read the Faller Group report and watched their video taped interviews. He then discounted their testimony and expressed concerns over their methodology.⁵⁶

In the subsequent damages case, trial court judge Donald Shelton, appointed his own expert for an objective evaluation of a little girl and the Faller Group methods. Court examiner Jack P. Haynes, Ph.D. read transcripts and watched video tape of two Faller Group interviews. In his report for the court, he explained that he could "comment for many pages..." on the problems with the Faller Group methods. He described the Faller process as utilizing "non-standard approach to child interviewing",⁵⁷ with "...a strong preconception of what had happened to the child..."⁵⁸ He reported that the Faller Group "...went about trying to elicit it with no orientation to alternatives: interviewer bias."⁵⁹

Dr. Haynes, went on to report that:

⁵³ *Id.* - pg 13 *emphasis added*.

⁵⁴ Faller, Kathleen and DeVoe, Ellen. (1995). Allegations of Sexual Abuse in Divorce. *Journal of Child Sexual Abuse*. Vol. 4(4), pg.22.

⁵⁵ *Id.* pg 22.

⁵⁶ *Champney v Champney* Jackson County, Michigan Case No. 92-062071-DM

⁵⁷ *Champney v Faller et al.* Washtenaw County (Ann Arbor) Michigan Case No. 95-4760CK – *Report of Court's Expert* – November 3rd, 1997 pg 20.

⁵⁸ *Id.*

⁵⁹ *Id.*

"The questions of the interviewer...often were leading, value-laden and often introduced concepts to [the child] that were unrelated to what had transpired during the interview At another point, the interviewer introduced the concept to [the child] 'that you have to go to daddy's house all by yourself without mommy.' This of course introduces the concept, which may be foreign to the child, that the father's house is something to be avoided or perhaps is dangerous. There was no foundation presented for such concepts..."⁶⁰

Responding to the Court's request for a detailed review and report, Haynes continued:

"The gist of much of it is that the interviews did not appear to be an objective search and examination ... There was an absence of a meaningful orientation to alternate hypotheses. At times [the child] is clearly threatened and coerced....At one point (Tape 2 hours 56 minutes mark) the interviewer stated 'Daddy's gonna keep coming back until the [child] doll tells us what happened'..."⁶¹

Psychologist Haynes then reported directly on the manner in which Faller and her Group reported the results of their interviews:

"...the interviewer in written materials stated 'with considerable difficulty, [the child] was able to tell me what her daddy had done that hurt her.' In the examiner's opinion, from having read the transcripts and having viewed the tapes there was **not** a reasonable conclusion that [the child] had validated that her father had harmed her. In the report the statement is made 'she disclosed the details of sexual abuse.' That was **not** the examiner's impression from viewing these tapes and from reading the transcript."⁶²

He completed his assessment with the comment that "... there are multiple various problems with the data gathering...." and noted "... no other family evaluators came to similar conclusions about sexual abuse of [the child]."⁶³

In yet another objective evaluation of Faller and her work, the trial court in another Michigan county made a specific request of its own court clinic, for an evaluation. Karol Ross, a senior clinician at the Court's clinic was assigned the job.⁶⁴ After completing an exhaustive review of all of the Faller Group's work, including a thorough review of Faller and the Group on video tape, psychologist Ross began her report by describing the work of the first social worker to see the child:

"[the social worker] ...went into her meeting with [the child] with a preconceived set of ideas to confirm what she already knew."⁶⁵

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* pg 21 *emphasis in the original.*

⁶³ *Id.*

⁶⁴ *Recchia v Recchia* Macomb County Michigan Case No. 89-5210-DM. Karol Ross is a psychologist and law school graduate. She has lectured widely on the proper methodology for custody, *P.A.S.* and sexual abuse evaluations. See, e.g.: Blush, G. L., & Ross, K. L. (1987). Sexual allegations in divorce: The SAID syndrome. *Conciliation Courts Review*, 25(1) 45-55.

⁶⁵ *Recchia v Recchia* Macomb County Michigan Case No. 89-5210-DM. *Psychodiagnostic Clinic* Report pg 20.

Ross thoroughly reviewed this Faller Group member's work and wrote:

"Through reviewing the Faller group documents submitted, it appears that many of these inappropriate techniques were utilized. For instance, in reviewing [a Faller Group member]'s report specifically of [the child], it appeared that the child was interviewed on multiple occasions and that she frequently contradicted herself."⁶⁶

"It is this evaluator's opinion that [the social worker] utilized other inappropriate techniques as leading questions and confirmatory bias with the minor child which had the effect of compromising the data."⁶⁷

Concerning these important interviews, Ross noted that the Faller Group member who interviewed the child on multiple occasions:

"...accepts all information that fits her beliefs and rejects other data that is told to her by [the child] that does not fit her perceptions."⁶⁸

"All of the other of these positive or contradictory remarks made during the interview are ignored because again they do not fit [the social worker]'s paradigm.....The rest of this interview is coercive, convoluted, and leading."⁶⁹

Specifically turning her attention to social worker Kathleen Faller, psychologist Ross wrote:

"This evaluator has some profound concerns regarding the interviewing techniques of Dr. Faller..... She also engaged in the excessive use of leading rather than open-ended questions, multiple interviews, and confirmatory bias."⁷⁰

"These interviewing techniques embraced by Dr. Faller..... represent those techniques which are said to produce tainted and unreliable responses in children....."⁷¹

Court psychologist Ross went on to comment:

"Dr. Faller's interviewing techniques were coercive in terms of the multiplicity of contacts, duration of the session, and the use of leading questions."⁷²

Ross was shocked by a statement in Kathleen Faller's report; "I tried to redirect her to the penis..."⁷³ and opined:

"This statement about 'redirecting the child to the penis' is another example of the use of leading questions and is the antithesis of the open ended questioning procedure advocated by most researchers."⁷⁴

⁶⁶ *Id.* pg 19.

⁶⁷ *Id.* pg 20.

⁶⁸ *Id.* pg 21.

⁶⁹ *Id.* pg 22.

⁷⁰ *Id.* pg 25.

⁷¹ *Id.* pg 25.

⁷² *Id.* pg 26.

⁷³ *Recchia v Recchia* Macomb County Michigan Case No. 89-5210-DM. Exhibit: Kathleen C. Faller 11-21-95 Psychosocial Evaluation pg 3.

Ross went on to note:

“..... when Dr. Faller received responses she was not interested in because they did not fit her bias, she simply ignored these responses and persisted in asking the questions pertaining to what she believed had occurred regarding sexual abuse. These were the same techniques utilized by Ms. [social worker]; leading questions, repetitive questions, and confirmatory bias.”⁷⁵

Concerning the entire Faller group team, Ross concluded:

“This evaluator’s criticism of this entire process remains that these professionals never looked at the whole pictureThey also engaged in the use of leading questions with the child, multiple contacts, sessions of long duration, repetitive questioning, and the use of confirmatory bias. In addition they appeared to make quantum leaps and to make statements that made [the father] look ‘bad’ without backing these statements up with behavioral proofs or indicators.”⁷⁶

“Additionally, interviewing children for extended periods of time, for multiple sessions, and using the anatomically correct dolls and drawings which are highly suggestive, as did Ms. [Faller Group member] and Dr. Faller, are all techniques which are suggestive and taint a child’s memory and recall.”⁷⁷

Finally, psychologist Ross demonstrated that Dr. Faller and her Group had completely missed that the little girl they were manipulating, had brain damage:

“The ‘team’ never seemed to take into consideration the diagnostic assessment by Dr. [N] of [the child's] neurological deficits and the impact this might have on her ability to understand questions put forth by the interviewers, particularly those questions which required the child to use the dolls or drawings to explain alleged abuse or what this meant for [the child] in terms of her memory or recall. Further, they themselves engaged in multiple interviews of the child..... The team used leading questions as opposed to open-ended inquiries, sessions of long duration which turned out to be coercive.....and engaged in confirmatory bias. They appeared to accept what the child said if it fit their perceptions of abuse and they ignored or left unchallenged those statements by [the child] that were outside of their belief system. In short, they violated most acceptable protocols for the collection of reliable data.”⁷⁸

It is likely that student essayist Cheri L. Wood had no idea that these serious criticisms of Kathleen Faller's work were readily available when Ms. Wood undertook her Note. But, the unfortunate point is that judges, attorneys and court personnel have even *less* time than a law student, to find materials upon which to rely; or in the Faller Group's case, materials to shun.

⁷⁴ *Recchia v Recchia* Macomb County Michigan Case No. 89-5210-DM. *Psychodiagnostic Clinic* Report pg 26.

⁷⁵ *Id.* pg 27.

⁷⁶ *Id.*

⁷⁷ *Id.* pg 28.

⁷⁸ *Id.* pg 31.